

1 Adopt 2 Cal. Code Reg. Section 18944.2 to read:

2 **§ 18944.2. Gifts to an Agency.**

3 (a) Applicability. This regulation sets forth circumstances under which a  
4 payment made to a state or local government agency, that is controlled by the agency and  
5 used for official agency business, is not considered a reportable or limited gift to an  
6 individual public official, although the official receives a personal benefit from the  
7 payment.

8 (b) Definitions.

9 (1) “Payment” means a payment as defined in Section 82044 and includes a  
10 monetary payment to an agency, a loan, gift, or other transfer, and the payment for, or  
11 provision of, goods or services to an agency.

12 (2) “Agency head” means an individual in whom the ultimate legal authority of  
13 an agency is vested, or who has been delegated authority to make determinations by the  
14 agency for purposes of this regulation.

15 (c) Gift to an Agency. A payment, that is otherwise a gift to a public official, as  
16 defined in Section 82028, shall be considered a gift to the public official’s agency and not  
17 a gift to the public official if all of the following requirements are met:

18 (1) Agency Controls Use of Payment. The agency head, or his or her designee,  
19 determines and controls the agency’s use of the payment. The donor may identify a  
20 purpose for the payment, but the donor may not designate by name, title, class, or  
21 otherwise, an official who may use the payment. If the payment will provide a personal  
22 benefit to an official, the agency head, or his or her designee, shall select the individual

1 who will use it. The agency official who determines and controls the agency's use of the  
2 payment may not select himself or herself as the individual who will use the payment.

3 (2) Official Agency Business. The payment must be used for official agency  
4 business.

5 (3) Agency Reports the Gift. Within 30 days after use of the payment, the  
6 agency reports the payment on a form prescribed by the Commission that includes the  
7 following information:

8 (A) A description of the payment, the date received, the intended purpose, and  
9 the amount of the payment (or the actual or estimated value of the goods or services  
10 provided).

11 (B) The name and address of the donor. If the donor is not an individual, the  
12 report shall also describe the business activity, or the nature and interests of the entity. If  
13 the donor has raised funds from other persons for the specific purpose of making the  
14 payment to the agency, the report shall contain the names of and amounts given by these  
15 persons.

16 (C) The agency's use of the payment, and the name, title, and department of the  
17 agency official for whom the payment was used. The report shall include the date(s) and  
18 place(s) of travel, and a breakdown of the total expenses for transportation, lodging,  
19 meals and other related expenses.

20 (D) The form is signed by the agency head, or his or her designee, and  
21 maintained by the agency as a public record subject to inspection and copying under  
22 Section 81008(a).

1       (E) A state agency shall provide the completed form to the Commission (or in the  
2 case of the Commission to the office of the Attorney General), within 30 days after use of  
3 the payment, by mail, personal delivery, electronic mail or facsimile. If the state agency  
4 maintains a website, the state agency shall also post a copy of the form or the information  
5 in the form on its website in a prominent fashion within 30 days after use of the payment.  
6 If the state agency does not maintain a website, the Commission shall post a copy of the  
7 form or the information in the form on its website.

8       (F) A local agency shall provide the completed form to the filing officer who  
9 receives the agency employees' statements of economic interests, within 30 days after  
10 use of the payment, by mail, personal delivery, electronic mail or facsimile. The filing  
11 officer shall post a copy of the form or the information in the form on its website, or if it  
12 does not maintain a website, shall provide a copy of the form to the Commission which  
13 shall post the information on its website.

14       (G) The individual in the agency who has official custody of these forms is the  
15 filing officer for the forms, keeps a log of the forms under both the name of the agency  
16 and official receiving the payment, and maintains the forms for a period of not less than  
17 four years.

18       (d) Limitations on Application of this Regulation. The exception provided in  
19 subdivision (c) does not apply to the following payments:

20       (1) A payment for travel, including transportation, lodging, and meals, for a state  
21 or local elected officer, as defined in Section 82020, or an official specified in Section  
22 87200.

1       (2) A payment for travel to the extent that it exceeds the agency's reimbursement  
2 rates for travel, meals, and lodging, and other actual and necessary expenses, or if the  
3 agency has no standard policy or practice concerning reimbursement rates, the State per  
4 diem rates as set forth in applicable sections of the State Administrative Manual and  
5 Department of Personnel Administration regulations, or the Internal Revenue Service  
6 rates for reimbursement of these expenses as set forth in the U.S. General Service  
7 Administration's website under "Per Diem Rates" and Internal Revenue Service  
8 Publications 463 and 1542, or their successors.

9       (3) A payment for travel that the agency head, or his or her designee, has not  
10 preapproved in writing in advance of the date of the trip.

11       (4) Passes or tickets, as described in Regulation 18944.1, which shall be  
12 governed by that regulation.

13       (e) Public Colleges and University Research Projects. Notwithstanding this  
14 regulation, a donation to a California public college or university for a specific research  
15 project that is received consistent with the requirements of Regulation 18702.4(c) or a  
16 meal received in the course of the college's or university's official fundraising activity,  
17 which qualifies under federal and state law for a deduction as a charitable contribution for  
18 educational purposes, will be deemed a gift to the college or university.

19       (f) Payments from the Federal Government. Notwithstanding this regulation, a  
20 grant, reimbursement, funding, or other payment received by a state or local government  
21 agency from a federal government agency for education, training, or other inter-agency  
22 programs, will not be considered a gift to the public official who receives a personal

1 benefit from the payment.

2 Comments:

3 1. Acceptance of a pass or discount from a transportation company by a public  
4 officer, other than a Public Utilities Commissioner, may result in forfeiture of the  
5 official's office pursuant to Article XII, Section 7 of the California Constitution.

6 NOTE: Authority cited: Section 83112, Government Code.

7 Reference: Sections 82028, 82030, 82044, 87100, 87103, 87207, 87302 and 89501  
8 through 89506, Government Code.